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The Commonwealth of Massachusetts

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INDEPENDENT STATE AUDITOR'S REPORT
ON THE
ABOLITION OF WORCESTER COUNTY GOVERNMENT
AND THE TRANSFER OF ITS
FUNCTIONS, ASSETS, AND LIABILITIES
TO THE COMMONWEALTH OF MASSACHUSETTS

OFFICIAL AUDIT REPORT

MAR 29 2000

ISSUED BY THE
Department of the State Auditor

INTRODUCTION

On July 11, 1997, Chapter 48 of the Acts of 1997, "An Act Abolishing Certain Counties and for the Payment by the Commonwealth of Certain Debts and Obligations of Middlesex County," was signed into law. This Act provided for the immediate abolition of Middlesex County and the transfer of its functions to the Commonwealth. In addition, this Act delegated the Commonwealth to prepare for the abolition and transfer of the functions of Worcester and Hampden counties to the Commonwealth as of July 1, 1998. The Office of the State Auditor (OSA) has conducted a review of the abolition of the Worcester County government and the transfer of its duties, functions, and responsibilities to the Commonwealth. Our audit also included a review of compliance with Chapter 48 of the Acts of 1997, the County Transfer Act and other applicable laws, rules and regulations. On November 16, 1999, Chapter 127 of the Acts of 1999 was passed. Section 53 of the Act established chapter 34B of the Massachusetts General Laws, (MGL) Abolition of County Government. This law clarifies and changes prior Abolished County legislation.

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AUDIT RESULTS

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1. Status of Worcester County Cash on Hand as of Transfer Date: As of June 30, 1998, Worcester County had \$4,303,592 on deposit in a number of bank accounts. During fiscal year 1999 the County had receipts of \$402,123, earned interest of \$130,467, had expenditures of \$1,396,162, transferred \$3,206,388 to the Commonwealth's general fund, returned \$22,206 to the Commonwealth's Department of Public Health and returned \$5,642 to the Commonwealth's Department of Education. As of June 30, 1999, the Commonwealth of Massachusetts transferred \$3,206,388, net of interest earned and expenditures clearing the accounts, from the Worcester County accounts into the Commonwealth funds. However, as of June 30, 1999 the County has a balance of \$205,784 that remains to be transferred to the Commonwealth. The balance consists of \$205,450 from the Registry of Deeds North and \$334 from the Registry of Deeds South.
2. Transfer of County Property to the Commonwealth: All rights, title, and interest in real and personal property were to be transferred to the Commonwealth as of the date of transition. Our inventory review revealed that the County had adequate controls over its fixed assets. Specifically, the County's inventory listing was properly maintained and is available to facilitate the transfer to the Commonwealth. However, county abolition legislation does not require the state to formally execute and record and file for registration with the registry of deeds a certificate confirming ownership of Worcester County's property.
3. Status of the Assumed Worcester County Debts by the Commonwealth: Worcester County had approximately \$10.9 million in liabilities and debts to County creditors and holders of bonds and notes as of June 30, 1998. Chapter 48, Section 6, of the Acts of 1997 states that all valid liabilities and debts of an abolished county that are in force immediately before the transfer date shall be obligations of the Commonwealth as of the transfer date. Chapter 319 of the

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Acts of 1998 appropriated \$10.9 million for payment to the County's creditors. In addition, as of June 30, 1998, the County had approximately \$24.1 million in unfunded pension costs (based upon the latest County actuarial valuation done in 1994), resulting in an unresolved obligation of approximately \$30.6 million. In accordance with new legislation, Chapter 34B of the Massachusetts General Laws, the Secretary of Administration and Finance is required to determine gross liabilities and gross assets of an abolished county and recover any differences from the member municipalities of the county by April 1, 2000.

4. Vacation and Compensatory Time: Our review noted that Worcester County, contrary to the County Personnel Board's Rules and Regulations, allowed employees to accrue unlimited vacation days and compensatory time. As of June 30, 1998, there were 421 employees from the Sheriff's Department who had accumulated a total of 5,529 days of compensatory time, with an estimated value of \$766,124. In addition, 34 Sheriff Department employees accumulated excess vacation days, ranging from 25 days to 139 days, with an estimated value of \$146,660. Furthermore, we determined that 19 non-Sheriff Department employees accumulated compensatory time with a value of approximately \$43,813; of which four employees have excess vacation carry-over ranging from 56 to 204 days. Of the 19 non-Sheriff Department employees, 12 employees whose positions were eliminated with the abolition of County government were paid for their unused vacation days and compensatory time costing the County \$101,727. 9
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1998. We noted that the Register did not maintain any form of accounting records or checkbook to document transactions. In addition, the Register's administrative assistants were allowed to sign the Register's name to checks when he was not available. Moreover, we noted that a total of \$65,499 was expended in the last few weeks of the County government period for services and supplies not yet received. Our review also revealed instances in which the Registry did not adhere to the Commonwealth's competitive-bidding requirements.

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INTRODUCTION

Background

Worcester County, incorporated by an act of the General Court in 1731, is composed of four cities and 56 towns with a land area of 1,589 square miles, making it the largest County in Massachusetts. With a population of approximately 464,352, Worcester is the third-ranking County in the state, behind Middlesex and Suffolk Counties. Three elected County Commissioners, under the authority of the Massachusetts General Laws, directed the functions of Worcester County government. The County Commissioners, Sheriff, County Treasurer, and Registers of Deeds for the Worcester District and the Northern District made up the elected officials of the Worcester County government.

On July 11, 1997, Chapter 48 of the Acts of 1997, "An Act Abolishing Certain Counties and for the Payment by the Commonwealth of Certain Debts and Obligations of Middlesex County," was signed into law. This Act provided for the immediate abolition of Middlesex County and the transfer of its functions to the Commonwealth. Moreover, it delegated the Commonwealth to prepare immediately for the abolition and transfer of Worcester and Hampden counties as of July 1, 1998.

The designation of a transition task force, coordinated by the Executive Office for Administration and Finance (EOAF), was influential in identifying and resolving the major issues relating to the transfer of county functions. The task force consisted of members representing EOAF, the Central Business Office, the Office of the State Comptroller, the Group Insurance Commission (GIC), the State Retirement Board (SRB), the Department of Revenue, the Division of Information Technology, the Office of the State Auditor (OSA), the Human Resource Division, the Division of Fiscal Affairs, the Office of the Secretary of State (OSS), the Office of the State Treasurer, the Administrative Office of the Trial Court, and Worcester County government officials. In addition, the Division of Capital Asset Management and the Public

Employee Retirement Administration Commission (PERAC) provided resources and information to the task force.

On July 1, 1998, the elected Worcester County Commissioner positions were terminated, and the duties and responsibilities of the County Treasurer, an elected official until December 31, 2002, were transferred to the Commonwealth. The County Treasurer's Office functions were absorbed into other state agencies and departments under the supervision of EOAF. However, the County Treasurer shall continue to occupy, at no cost, the office space occupied by the Office of the County Treasurer immediately before the transfer date. The Treasurer's functions, after June 30, 1998, included the orderly transfer of assets, liabilities, and personnel from Worcester County government to the Commonwealth. Additionally, the Treasurer will continue to oversee the Worcester County Retirement System.

Under the provisions of Chapter 48, the Worcester County Sheriff will become an employee of the Commonwealth, and will retain administrative and operational control over the Office of the Sheriff, the jail, and the House of Correction as an independent department in Worcester County. The Sheriff will continue as an elected official and will operate as a separate department under the general supervision of the Executive Office of Public Safety.

The Registers of Deeds of Worcester County (Worcester and Worcester-Northern District), who are elected officials and personnel of the Worcester County Registries of Deeds, will become employees of the Commonwealth. All functions of the Registries of Deeds will be transferred to the OSS.

Under the Act all rights, title, and interest of county real and personal property shall be transferred to the Commonwealth, including all court houses, registries of deeds, registries of probate, buildings, land, parking facilities, fixtures, and improvements. The county properties shall be under the jurisdiction of the Commonwealth's Division of Capital Asset Management. However, all county court houses shall be operated and maintained by the Office of the Chief Justice for Administration and Management subject to the general superintendence of the

Supreme Judicial Court. Former County employees whose primary work function concerns the operation and maintenance of Worcester County court facilities shall be transferred to the Commonwealth as employees under the Administrative Office of the Trial Court.

On June 26, 1998, Chapter 156 of the Acts of 1998 was approved to establish a reserve account of \$1,253,000 for “certain expenses associated with the abolition of Worcester and Hampden counties; provided, that \$30,000 shall be expended for salaries and benefits for the treasurers and treasurer’s staffs of said counties.” In addition, in August 1998, Chapter 319 of the Acts of 1998 was approved allocating \$10,920,246 “for the payment of certain costs and liabilities of Worcester County”. Subsequent to our audit on November 16, 1999, Chapter 127 of the Acts of 1999 was passed. Section 53 of the Act established chapter 34B of the Massachusetts General Laws, (MGL) Abolition of County Government. This law clarifies and changes prior Abolished County legislation.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12 of the General Laws, the OSA conducted a review of the abolition of Worcester County and the transfer of its duties, functions, and responsibilities to the Commonwealth of Massachusetts. Our review was conducted in accordance with applicable generally accepted government auditing standards. The objective of our review was to determine the status of the transfer of the Worcester County assets, liabilities, and critical functions to the Commonwealth and all compliance requirements as established by Chapter 48 of the Acts of 1997, Chapter 300 of the Acts of 1998 and other applicable laws, rules, and regulations. Our review included the following:

- The transfer of approximately 671 former County employees to the state payroll and retirement system in several different agencies;
- Cash, cash management, and cash transfer procedures regarding all funds in custody of Worcester County government;
- All rights, titles, and interest in real and personal property, including land, buildings, roads, equipment, furniture and fixtures, and improvements owned or held by the County;

- All valid liabilities, including indebtedness, obligations, and interest to be conferred upon the Commonwealth by the transfer date; and
- All claims for or against the County as of the date of transfer to the Commonwealth.

To achieve our audit objectives, we conducted interviews with County officials, including representatives from the County Treasurer's Office, the Sheriff's Office and Correctional Facility, the Registries of Deeds, and the County Commissioners' Office. In addition, we interviewed representatives of the SRB; PERAC; the Office of the State Treasurer; the Division of Capital Asset Management; the OSS, Department of Revenue (DOR), and the Administrative Office of the Trial Court.

To determine compliance with Chapter 48 of the Acts of 1997 relative to the transfer of County personnel to the Commonwealth's payroll, we selected a sample from the County's payroll warrant. Our test included a review of Medicare tax deductions, employee retirement group classifications, retirement percentage deductions, health insurance deductions, and authorized changes in salaries. In addition, we reviewed employee records for vacation, sick, and compensatory time balances for accuracy, completeness, and compliance with County policies.

We reviewed the County's cash management procedures and the status of the transfer of cash to the Commonwealth. We also conducted interviews with appropriate County officials and reviewed all bank statements and relevant documents. Moreover, we reviewed County fixed assets to determine whether buildings, equipment, and fixtures were properly recorded and maintained, and we examined lease contracts relative to buildings and equipment. Additionally, we obtained a listing of County-owned buildings and land. Also, we obtained a listing of the County's pending litigation, to determine the current status.

During the course of our audit, under the provisions of Chapter 647 of the Acts of 1989, we were informed by the Attorney General's Office and EOAF that certain accounts were not under the control of the County Treasurer possibly in violation of the General Laws. Chapter 647 of the

Acts of 1989, Internal Controls at State Agencies, requires the OSA to determine the internal control weaknesses that contributed to or caused a variance, loss, shortage, or theft of funds or property; make recommendations to correct the condition found; identify the internal control policies and procedures that need modification; and report the matter to appropriate management and law enforcement officials.

Based on our review, except for the matters discussed in the Audit Results section of the report, the transfer was in compliance with Chapter 48 of the Acts of 1997 and other applicable laws, rules and regulations, as follows:

- Approximately \$13.3 million of liquid assets of the abolished County were transferred to the Commonwealth.
- Outstanding court judgments of \$1,812,318 as of June 30, 1998 were subsequently liquidated by the Commonwealth.
- Worcester County employee health insurance premium benefit contributions were transferred at the same percentage as other state employees. (Worcester County was part of the state insurance system under GIC since 1984.)
- The County did not hire additional employees, create new positions, or give employees extraordinary unauthorized salary increases prior to the transfer to the Commonwealth.
- Medicare tax was being withheld on all transferred County employees as required by the United States Internal Revenue Service.

AUDIT RESULTS

1. Status of Worcester County Cash on Hand as of Transfer Date

With the abolition of the Worcester County Government, there was a requirement to transfer all funds to the Commonwealth and to close existing accounts. Chapter 48 of the Acts of 1997, states that "all assets, including revenue received pursuant to Chapter 64D of the General Laws and such other revenue said county receives as of immediately before the transfer date shall become assets and revenue of the Commonwealth."

As of June 30, 1998, Worcester County had \$4,303,592 on deposit in various bank accounts. During fiscal year 1999 the County had receipts of \$402,123, earned interest of \$130,467, had expenditures of \$1,396,162, transferred \$3,206,388 to the Commonwealth's general fund, returned \$22,206 to the Commonwealth's Department of Public Health and returned \$5,642 to the Commonwealth's Department of Education. As of June 30, 1999, Worcester County had a balance of \$205,784, which remains to be transferred to the Commonwealth. The \$205,784 balance is made up of five accounts (excise stamp sales, document recordings and land registrations) at the Registry of Deeds North totaling \$205,450 and one account (excise stamp sales) from the Registry of Deeds South totaling \$334.

Recommendation: EOAF and the Office of the State Comptroller should complete the transfer of the former Worcester County bank account balances to the Commonwealth's General Fund. As of December 13, 1999, steps were being taken to complete this transfer.

2. Transfer of County Property to the Commonwealth

As part of our review, we tested the County's maintenance of and control over its fixed assets. We obtained a comprehensive inventory listing of the County's fixed assets for equipment, furnishings, buildings, and vehicles, and to verify the inventory listing, we made site visits to the following locations:

- Worcester County Treasurer's Office

- Worcester Registry of Deeds – Southern District
- Worcester Registry of Deeds – Northern District
- Worcester County Jail
- Clinton District Court
- Fitchburg District Court
- Gardner District Court
- Milford District Court
- Westboro District Court
- Uxbridge District Court

Our inventory tests found that Worcester County had adequate control over its fixed assets. The inventory listing of the County's fixed assets was properly maintained and readily available to facilitate the transfer to the Commonwealth for accounting, reporting and auditing purposes. Additionally, our testing found these controls to be in adherence with Section 7 of Chapter 48 of the Acts of 1997, which states, in part:

All rights, title and interest in real and personal property owned or held by an abolished county immediately before the transfer date, including without limitation, all court houses, registries of deeds, registries of probate, and all other county buildings, and the land on which they are situated and any parking facilities, fixtures and improvements located thereon or appurtenant thereto, shall be transferred to the Commonwealth

Section 7 also provides, "the transfer under this section shall be effective and shall bind all persons, with or without notice, without further action or documentation". Therefore, according to a representative of the Division of Capital Asset Management (DCAM), by operation of law, title to all former county-owned real property now rests in the Commonwealth of Massachusetts.

Chapter 48, Section 7, further states that DCAM "may, from time to time, execute and record and file for registration with any registry of deeds or the land court, a certificate confirming the Commonwealth's ownership of any interest in real property formerly held by an abolished county." DCAM informed us that they currently have no plans to file and execute with the registry of deeds or land court a certificate confirming the Commonwealth's ownership. They further stated that they are not legally required to do so. DCAM will, however, file certificates to perfect the title of any property in which issues over ownership and/or boundaries may arise. A

complete inventory of all Worcester County real property transferred to the Commonwealth has been finalized by DCAM.

On November 16, 1999, Chapter 127 of the Acts of 1999 was passed. Section 53 of the Act established Chapter 34B of the Massachusetts General laws, (MGL) Abolition of County Government. Section 9 of chapter 34B has basically the same requirement as Chapter 48, Section 7, of the Acts of 1997.

Recommendation: Although Chapter 34B, Section 6 of the MGL's makes it clear that title to all formerly owned county real property now rests in the Commonwealth, it does not require the state to formally execute and record and file for registration with the registry of deeds a certificate confirming ownership. We recommend that county abolition legislation be amended to require that all former county real property be recorded and filed at the appropriate registry of deeds as now belonging to the Commonwealth.

3. Status of the Assumed Worcester County Debts by the Commonwealth

Our review noted that the responsibility to establish a total for the Worcester County's liabilities and debts fell upon representatives of the Department of Revenue – Division of Local Services. Specifically, Chapter 48, Section 6, of the Acts of 1997 states, "All valid liabilities and debts of an abolished county which are in force immediately before the transfer date shall be obligations of the commonwealth as of the transfer date."

A "Preliminary Analysis of Liabilities of Debts" as of June 30, 1998 was prepared and established at approximately \$10.9 million. The Commonwealth, under Chapter 319 of the Acts of 1998, appropriated a total of only \$10.9 million for the payment to the County's creditors, excluding the County's retirement cost obligation. The \$10.9 million appropriated by the Legislature to pay the County's creditors and holders of bonds and notes, as addressed in Chapter 48, Section 9, of the Acts of 1997, will be recovered by an assessment of an amount equal to the county tax assessed in fiscal year 1998 to the 60 cities and towns of Worcester County. The

Secretary of EOAF has filed a schedule with the Legislature calling for the assessment of the same amount through fiscal year 2008, and a residual amount in fiscal year 2009.

The issue of the County's unfunded pension obligation, applicable to the County's employees as of June 30, 1998, has yet to be resolved. The last actuarial valuation date accepted by the Public Employee Retirement Administration Commission was January 1, 1994, with the unfunded pension obligation set at \$24.1 million. As a result, there was a total of \$30.6 million in unfunded County employee retirement costs remaining unresolved. Chapter 300 of the Acts of 1998 requires the state to conduct a study to determine the responsibility of the potential retirement costs for all County employees transferred to state service and for all County retirees. On November 16, 1999, Chapter 127, Section 53 of the Acts of 1999 created a new law, Chapter 34B, Abolition of County Government. The new law no longer requires the Commonwealth to conduct a study on unfunded pension liabilities. Rather, the new law requires the Secretary of Administration and Finance to determine the gross liabilities and gross assets of the abolished county and recover any difference from the member municipalities of the county. This determination is currently being performed by EOAF.

Through June 30, 1999, \$9,643,808 has been expended for County debt. According to the Division of Local Services as of September 29, 1999, \$170,981 in pending claims are being reviewed for payment.

Recommendation: The Secretary of Administration and Finance should determine the gross liabilities and gross assets of Worcester County and recover any differences from the member municipalities of the County. Based on the determination, the County's amortization schedule should be adjusted as necessary in accordance with Chapter 34B.

4. Vacation and Compensatory Time

The County Personnel Board's Rules and Regulations do not address the awarding and use of compensatory time in lieu of overtime pay, which was used in various County departments. County officials informed us that the primary obligation of the County government was to

provide essential government services, such as the maintenance of the courthouses, operations of the County jail, and the general government of the County. It should be noted that the County Personnel Board was dissolved in the middle of the 1980s and the County Board of Commissioners acted on County personnel matters in lieu of the Personnel Board.

Our review revealed that Worcester County allowed employees to accrue unlimited vacation days and compensatory time, contrary to the County Personnel Board's Rules and Regulations. Specifically, as of June 30, 1998, there were 421 employees from the Sheriff's Department who had accumulated a total of 5,529 days of compensatory time, with an estimated value of \$766,124. In addition, 34 Sheriff Department employees accumulated excess vacation days, ranging from 25 days to 139 days, with an estimated value of \$146,660. Additionally, 19 non-Sheriff Department employees accumulated compensatory time with a value of approximately \$43,813, and four of those employees had excess vacation carry-over days ranging from 56 days to 204 days. In fact, of the 19 non-Sheriff Department employees, 12 employees whose positions were eliminated with the abolition of County government were paid \$101,727 for their unused vacation days and compensatory time.

The County Personnel Board's Rules and Regulations policy on vacation time states, in part:

Assignment of vacation periods for individual employees shall be arranged by the appointing officer for such time or times as shall best serve the public interest. Vacation allowances may not be accumulated from year to year, except when the appointing officer shall certify that it is impossible because of work schedules on in emergencies for the vacation to be taken in the proper year. In no case can vacation leave be accumulated for more than one year, except on recommendation of the County Commissioners and approved by the County Personnel Board.

Acting as the Personnel Board, the County Board of Commissioners approved these vacation and compensatory time carry-overs. The County Treasurer also stated that this issue was discussed at several meetings and was known to the members of the transition task force. Our review of the County employees' personnel files noted that there was evidence of vacation carry-over approvals by the Board of Commissioners.

The task force's decision to carry over the excess vacation and compensatory time for one fiscal year was based on a lengthy and comprehensive evaluation. The task force wanted to ensure that the employees were held harmless. The County did not ask its employees to use excess vacation and compensatory time prior to abolition even though it was aware of the abolition almost a year in advance.

In accordance with Chapter 48 of the Acts of 1997, the Human Resource Division (HRD) determined that County employees would be allowed to transfer accrued vacation and compensatory time earned up to July 1, 1998, after which they will not be allowed to transfer any more accrued compensatory time. As of July 1, 1998, employees who have compensatory time on the books will be allowed to utilize such time for a one-year period, until June 30, 1999. Under no circumstances are employees allowed to utilize accrued compensatory time after June 30, 1999.

Since the County did not comply with its own policies and procedures regarding vacation and compensatory time, the excess time earned by employees could be considered a County debt and amounts could be recovered through the amortization assessment to cities and towns of Worcester County as set forth in Chapter 48, Section 9, as follows:

For the purpose of recovering amounts expended by the commonwealth for the liabilities and other debts assumed and paid by the commonwealth on behalf of an abolished county, the secretary of administration and finance shall establish a plan to recover said amounts, which may include refinancing the indebtedness of said county . . .

Sheriff Department officials indicated that, since the County was operating under deficit budgets, it could not hire additional employees or pay employees for overtime. As a result, the vacation and compensatory time accumulations were built up by County employees. The Sheriff Department, in conjunction with EOAF – HRD, are currently attempting to resolve this issue. With regard to the other non-Sheriff's Department employees, the former County employees with compensatory time were transferred to the Massachusetts Trial Court Division. Personnel from the Trial Court indicated that they are also addressing this issue of compensatory time and the

requirement to use the time within fiscal year 1999 and hoped to reach a reasonable and prudent resolution.

Recommendation: EOAF, in consultation with HRD, should review the excess vacation time and compensatory time that was carried over to the Commonwealth to determine whether the dollar value of the excess time should be recovered through the amortization assessment to cities and towns as provided for in Chapter 48, Section 9, of the Acts of 1997, as amended, or if other action is warranted and appropriate.

5. Telephone Commissions and Interest Income Transferred to Inmate Fund Account Prior to State Takeover:

Our review of the various Worcester County bank accounts revealed that \$339,263 was transferred out of the County Treasury's bank account and deposited into the Worcester County Jail Commissary and Welfare Fund account. A summary worksheet indicated that \$328,681 represented telephone commissions and \$10,582 represented interest income earned thereon. This transfer occurred on June 26, 1998 after a request to the County Treasurer from the County Sheriff. We were informed that such a transfer had never been done in the past.

When the Sheriff's Office was transferred to the Commonwealth, there was some question as to which law would apply as to where the telephone commissions should be deposited i.e., the Worcester County Jail Commissary and Welfare Fund account, or the Commonwealth's general fund. There are two laws that indicate how the revenue at the Sheriff's Office and correctional facilities should be deposited. The two laws are outlined as follows:

a. MGL, Chapter 29, Section 1, defines state revenue as, "all income from state taxes, state fees, fines, assessments, charges, and other departmental revenues, retained revenues, federal grants, federal reimbursements, lottery receipts, court judgments and the earnings on such income." Further, Chapter 29, Section 2, states, in part, "All revenue payable to the commonwealth shall be paid into the general fund, except revenue required by law to be paid into a fund other than the general fund and revenue for or on account of sinking funds, trust funds,

trust deposits and agency funds, which funds shall be maintained and revenue applied in accordance with law or the purposes of the fund.

b. Chapter 127, Section 3 of the MGL's requires that "any monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods and services to persons in the correctional facilities may be expended for the general welfare of all inmates at the discretion of the superintendent."

The telephone commissions may meet the revenue criteria of both laws; thus funds may be required to be deposited in the general fund or the commissary fund. The Worcester County Sheriff's Office claims that they are entitled to retain revenues from telephone commissions through Chapter 127, Section 3, of the Massachusetts General Laws. They maintain that telephones are a service and that all revenues from telephone commissions, not just the interest earned on said revenues, may be retained and expended by the Sheriff's Office. While it is true that telephones are a service, it would appear that the telephone company provides the service, not the sheriff. Therefore, it is possible these funds should be deposited in the general fund. Additionally, telephone commissions at state correctional facilities are deposited in the general fund as required in Chapter 29, Section 2 of the General Laws. Because of the uncertainty of where the funds should be deposited, clarification is needed as to which law applies or if an amendment to these laws is required in order to clarify where funds should be deposited and for what purpose.

Recommendation: EOAF, the Office of the Comptroller and the Worcester County Sheriff's Office should obtain a legal determination regarding Chapter 29, Section 1 and Chapter 127, Section 3 as to which law applies in order to determine where telephone commissions should be deposited i.e., the General Fund or the Commissary Fund. If necessary, the laws should be amended to clarify the purpose and use of funds and whether the funds should be deposited in the general fund.

6. Inadequate and Questionable Practices and Controls over Registry of Deeds Account

During the course of our audit, under the provisions of Chapter 647 of the Acts of 1989, we were informed by the Attorney General's Office and EOAF that certain Registry of Deeds accounts were not under the control of the County Treasurer, possibly in violation of the General Laws.

Our review of the Worcester Registry of Deeds – Southern District noted that the Register had established a checking account to pay for operational expenditures of the Registry. Although the Register claimed that this account was established with the verbal approval of the County Commissioners in 1990, it was not established in accordance with Chapter 35, Sections 10 and 11, of the General Laws, which requires the County Treasurer to collect, receive, and disburse all County funds, with the authorization of the majority of the County Commissioners. Furthermore, our review of this account for the fiscal year ended June 30, 1998 revealed that the Register did not properly account for the activity in this account, and did not follow the competitive bidding procedures established by Chapter 30B of the General Laws.

In fiscal year 1990, the Worcester County Commissioners and the Register entered into a verbal agreement that permitted the Register to retain 5% of the County's share of the Massachusetts Deeds Excise Tax Stamp collections. These funds were maintained in a checking account established by the Register and disbursed at his discretion for the maintenance and improvement of Registry operations. Chapter 64D, Section 12 (2) (c) of the General Laws allows for 10% of the Deeds Excise Tax Stamp collections to be "disbursed and expended for the automation, modernization and operation" of the Registry office. However, these funds should have been maintained by and expended through the County Treasurer's Office, as prescribed by Chapter 35, Sections 10 and 11, of the General Laws.

During fiscal year 1998, the Registry expended \$489,227 from the Deeds Excise Tax Stamp account. Our review of this account noted several internal control weaknesses. For example, the Registry did not maintain any form of accounting records or checkbook to document the

transactions processed. Since no checkbook or ledgers were maintained, proper reconciliation of the account could not be performed. In addition, the Register allowed his administrative assistants to sign his name to many of the checks we reviewed. While all the checks appeared to be for Registry expenses, by allowing other individuals to sign his name, the Register did not maintain proper controls over this account, which could have resulted in the loss, theft, or abuse of funds. Moreover, since these expenditures were not processed through the County Treasurer or County Commissioners, there were no oversight reviews of the activity in the account.

Because of the changeover from county to state government, we reviewed the expenditures made in June 1998 and found that the Registry expended \$266,532, of which \$65,499 was for the prepayment of services to be rendered during the next fiscal year. At the close of the fiscal year, the Registry prepaid for several administrative expenses to avoid any potential disruption of services during the transition from county to state control. These expenditures were for the following:

- Conversion of Registry plans from microfilm to CD-ROM -- \$49,999. This project is on-going through 1999 and should be completed in early fiscal year 2000.
- Computer programming services -- \$10,000. As of June 1, 1999, there was a balance remaining of \$6,895.
- Telephone repair and installation of future telephone lines -- \$2,000, as of June 1, 1999, the Registry had not expended any of these funds.
- Office supplies -- \$2,000. As of June 1, 1999, there was a balance remaining of \$543.
- Computer training -- \$1,500 as of June 1, 1999, the Registry had not received any training for these funds.

While these expenditures were made to ensure that there would not be any disruption of services during the transition from county to state control, sound business practices advocate that expenditures should not be made until services are rendered.

Also, during our review of the fiscal year 1998 expenditures, we found that the Registry did not follow proper bidding procedures. Specifically, we found several instances in which the

Registry purchased equipment or services without obtaining the required three price quotations or formally advertise for bids or proposals. Chapter 30B of the General Laws has established three sets of procedures for awarding supply and service contracts depending on the value of the contract.

- Contracts under \$1,000 – Use sound business practices. The law does not require formal competition for these small purchases.
- Contracts from \$1,000 to \$9,999 – Seek price quotes from at least three vendors and award the contract to the responsible vendor offering the supply or service for the lowest price.
- Contracts of \$10,000 or more – Conduct a formal advertised competition using sealed bids or proposals. In a bid competition, the contract is awarded to the qualified bidder who meets contract specifications and offers the lowest price. In a proposal process, the contract is awarded to the offeror submitting the most advantageous proposal taking into consideration specified evaluation criteria as well as price.

Our review revealed that the Registry purchased office equipment (\$9,048), a printer (\$7,850), and a postage machine (\$7,500) without obtaining the required three price quotations. Additionally, it expended funds for several items, including the conversion of Registry plans from microfilm to CD-ROM (\$49,999), a telephone system (\$23,113), a printer (\$24,460), and a film processor (\$19,460) without publicly advertising for services or using sealed bids. However, the Registry did obtain at least two bids and purchased the items from the lowest bidder. Nevertheless, without soliciting price quotations from at least three vendors or formally advertising for bids, the Registry could not be assured that they received the lowest possible price for these items.

Recommendation: The Registry should obtain refunds for all remaining balances for any prepaid expenses and deposit these amounts in the appropriate Registry or Commonwealth account. For all future purchases, the Registry should comply with all applicable rules, laws and regulations regarding contract bidding and contract awards.

7. Clarification Needed Regarding Salary Increases To Elected County Officials:

During our review we determined that the Worcester Registers of Deeds (North and South) and the Worcester Sheriff received salary increases subsequent to the abolishment of Worcester County government. Chapter 48, Section 4, of the Acts of 1997 states that there shall be no increases in the salaries of any abolished county's elected officials.

The Registers of Deeds of Worcester County, elected officials now working under the auspices of the Secretary of State's Office, received salary increases from the Secretary of State. The Sheriff of Worcester County received a pay increase through his department's annual budget which he reviews and approves.

In regard to increases given, we were able to determine that Chapter 151, Section 672 of the Acts of 1996 created a special study committee to study the transfer of registries of deeds to the Office of the Secretary of State. This statute reads as follows:

Notwithstanding any general or special law to the contrary, a registries of deeds transfer study committee is hereby created. Said committee is authorized and directed to study and produce a comprehensive report on the financial and programmatic implications and advisability of, and recommended procedures for, transferring the registries of deed in the counties of the commonwealth to the office of the secretary of state. The report shall assume that such transfer is to be accomplished no later than July first, nineteen hundred and ninety-seven. The members of the study committee shall be the secretary of state, the chair of the State Association of the Registers of Deeds, and the director of the division of local services in the department of revenue. The committee shall submit its report to the house and senate committees on ways and means and the joint committee on counties, on or before January first, nineteen hundred and ninety-seven.

On January 31, 1997, the Transfer Study Committee submitted a report to the Clerk of the House. This report recommended, among other things, that certain laws be amended to accommodate the salaries of the registers of deeds and all assistant registers of deeds. The report recommended salary classifications, which would conform to Class One and Class Two of Management Salary Schedule in use for employees of the Commonwealth in various job group categories, and created a model legislative act for consideration by the Legislature.

Even though the Legislative changes recommended in the Secretary of State's report were never acted upon, the suggested salary classifications for Registers of Deeds was used in establishing the salary increases for the Worcester County Registers of Deeds.

We noted that Chapter 151, Section 671 of the Acts of 1996 also established a county corrections transfer study committee. The statute reads as follows:

Notwithstanding any general or special law to the contrary, a county corrections transfer study committee is hereby created. Said committee is authorized and directed to produce a comprehensive report on the financial and programmatic implications and advisability of, and recommended procedures for, transferring corrections functions now performed by county governments to the executive office of public safety. The report shall assume that such transfer is to be accomplished no later than July first, nineteen hundred and ninety-seven. The members of the study committee shall be the secretary of the executive office of public safety, the chair of the Massachusetts Sheriffs' Association, and the director of the division of local services in the department of revenue. The committee shall submit its report to the house and senate committees on ways and means, the joint committee on public safety, and the joint committees on counties, on or before January first, nineteen hundred and ninety seven.

Unlike the county registry transfer committee, the corrections transfer study committee has not submitted a report to the legislature. Because a report was never produced, no salary classification system was suggested or developed.

Subsequent to our audit of the abolition of Worcester County government, new legislation was passed which amended Chapter 48 of the Acts of 1997. Chapter 127, Section 53 of the Acts of 1999 created Chapter 34B of the Massachusetts General Laws titled "Abolition of County Government." This new legislation was signed into law on November 16, 1999, more than 16 months after the abolition of Worcester County government. Section 3 of Chapter 34B now allows for elected county officials to receive salary increases after a county has been abolished. The new law reads, "there shall be no increase in the salaries of any abolished county's elected officials, prior to the transfer of the abolished county to the commonwealth." Therefore, the salary increases received by the Worcester County Registers of Deeds and Sheriff, after the County's transfer, are no longer inconsistent with county abolition legislation. However, the new legislation still remains silent on salary increases for these elected officials.

Section 10 of Chapter 34B states that registers of deeds of an abolished county shall remain elected officials retaining local administrative control under the general direction of the Secretary of State. It states that "Said secretary shall determine the budget of each registry, subject to appropriation." There is no discussion of salary increases for these elected registers of deeds.

Section 12 of Chapter 34B indicates that the sheriff of an abolished county, including Franklin County shall operate pursuant to the provisions of Chapter 37 of Massachusetts General Laws. Section 17 of Chapter 37 discusses the salaries of elected officials as follows:

The salaries of sheriff's shall be paid by their respective counties and shall, except as hereinafter provided, be in full compensation for all services rendered both as sheriff and as superintendent or keeper of the jail or house of correction. If a sheriff elects to act, or his deputy acts, as superintendent or keeper of the jail or house of correction and resides thereat, he shall be entitled to rent, heat and light, and such subsistence as he may desire out of the regular subsistence rations purchased for prisoners, together with such other maintenance as may be determined from time to time by the county personnel board.

The salary of the sheriff of the county of Suffolk shall be a sum equivalent to ninety per cent of the salary of an associate justice of the superior court.

The sheriff of the county of Nantucket shall, in addition to his salary, retain all fees collected and received by him for service of process.

The above law does not address salary increases and at what rate an abolished county sheriff's salary should be and when and how an abolished county's sheriff should receive an increase in salary.

The process of setting the salaries of abolished county elected officials should be reviewed and a determination should be made regarding further clarification.

Recommendation: We recommend that the appropriate parties review the methods, differences, and ambiguities in setting the salaries of former county elected officials from abolished counties who are now elected state officials.

APPENDIX I

Chapter 647 Acts of 1989An Act Relative to Improving the Internal Controls within State Agencies

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Chapter 647

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Eighty-nine

AN ACT RELATIVE TO IMPROVING THE INTERNAL CONTROLS WITHIN STATE AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Notwithstanding any general or special law to the contrary, the following internal control standards shall define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and shall constitute the criteria against which such internal control systems will be evaluated. Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the office of the comptroller.

(A) Internal control systems of the agency are to be clearly documented and readily available for examination. Objectives for each of these standards are to be identified or developed for each agency activity and are to be logical, applicable and complete. Documentation of the agency's internal control systems should include (1) internal control procedures, (2) internal control accountability systems and (3), identification of the operating cycles. Documentation of the agency's internal control systems should appear in management directives, administrative policy, and accounting policies, procedures and manuals.

(B) All transactions and other significant events are to be promptly recorded, clearly documented and properly classified. Documentation of a transaction or event should include the entire process or life cycle of the transaction or event, including (1) the initiation or authorization of the transaction or event, (2) all aspects of the transaction while in process and (3), the final classification in summary records.

(C) Transactions and other significant events are to be authorized and executed only by persons acting within the scope of their authority. Authorizations should be clearly communicated to managers and employees and should

APPENDIX I (Continued)

Chapter 647 Acts of 1989An Act Relative to Improving the Internal Controls within State Agencies

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include the specific conditions and terms under which authorizations are to be made.

(D) Key duties and responsibilities including (1) authorizing, approving, and recording transactions, (2) issuing and receiving assets, (3) making payments and (4), reviewing or auditing transactions, should be assigned systematically to a number of individuals to ensure that effective checks and balances exist.

(E) Qualified and continuous supervision is to be provided to ensure that internal control objectives are achieved. The duties of the supervisor in carrying out this responsibility shall include (1) clearly communicating the duties, responsibilities and accountabilities assigned to each staff member, (2) systematically reviewing each member's work to the extent necessary and (3), approving work at critical points to ensure that work flows as intended.

(F) Access to resources and records is to be limited to authorized individuals as determined by the agency head. Restrictions on access to resources will depend upon the vulnerability of the resource and the perceived risk of loss, both of which shall be periodically assessed. The agency head shall be responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison shall be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the agency resources shall determine the frequency of this comparison.

Within each agency there shall be an official, equivalent in title or rank to an assistant or deputy to the department head, whose responsibility, in addition to his regularly assigned duties, shall be to ensure that the agency has written documentation of its internal accounting and administrative control system on file. Said official shall, annually, or more often as conditions warrant, evaluate the effectiveness of the agency's internal control system and establish and implement changes necessary to ensure the continued integrity of the system. Said official shall in the performance of his duties ensure that: (1) the documentation of all internal control systems is readily available for examination by the comptroller, the secretary of administration and finance and the state auditor, (2) the results of audits and recommendations to improve departmental internal controls are promptly evaluated by the agency management, (3) timely and appropriate corrective actions are effected

APPENDIX I (Continued)

Chapter 647, Acts of 1989

An Act Relative to Improving the Internal Controls within State Agencies


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by the agency management in response to an audit and 14), all actions determined by the agency management as necessary to correct or otherwise resolve matters will be addressed by the agency in their budgetary request to the general court.

All unaccounted for variances, losses, shortages or thefts of funds or property shall be immediately reported to the state auditor's office, who shall review the matter to determine the amount involved which shall be reported to appropriate management and law enforcement officials. Said auditor shall also determine the internal control weaknesses that contributed to or caused the condition. Said auditor shall then make recommendations to the agency official overseeing the internal control system and other appropriate management officials. The recommendations of said auditor shall address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The agency oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified.

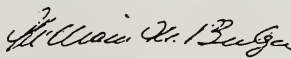
House of Representatives, December 21, 1989.

Passed to be enacted,

 , Speaker.

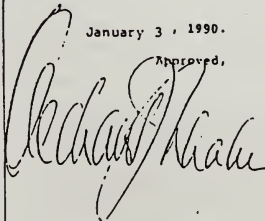
In Senate, December 22, 1989.

Passed to be enacted,

 , President.

January 3, 1990.

Approved,

 Governor.

APPENDIX II

Chapter 647 Awareness LetterFrom the State Auditor and the State Comptroller

The Commonwealth of Massachusetts

Office of the State Auditor
State House
Boston, MA 02133

Office of the Comptroller
One Ashburton Place
Boston, MA 02108

June 9, 1999

Legislative Leadership
Judicial Branch Administrators
Elected Officials
Secretariats
Department Heads

The Office of the State Auditor and the Office of the State Comptroller, as with past fiscal years, will continue our efforts regarding internal controls. Chapter 647 of the Acts of 1989, An Act Relative To Improving Internal Controls Within State Agencies, establishes the minimum level of quality acceptable for Internal Control Systems in operation throughout state departments and constitutes the criteria against which Internal Control Structures will be evaluated. With the passage of this law, we began an Internal Control Campaign to educate and make all departments aware of the significant role Internal Controls have on its financial and administrative operations. A good system of Internal Controls coordinates a department's policies and procedures to safeguard its assets, checks the accuracy and reliability of the department's accounting data, promotes operational efficiency, and encourages adherence to prescribed managerial policies.

Departments have made significant progress in the area of Internal Controls. Every department has certified to the existence of documented controls in the form of an Internal Control Plan. In Fiscal Year 1999, we will be broadening the Internal Control Campaign focus. We will be reviewing and testing plans in a broader context that includes all aspects of a Department's business, programmatic operations as well as financial.

The American Institute of Certified Public Accountants defines Internal Controls as a process designed to provide reasonable assurance regarding the achievement of objectives in the reliability of financial reporting, effectiveness, and efficiency of operations and compliance with applicable laws and regulations. Internal Controls consist of the following five interrelated components.

Control Environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of Internal Control, providing discipline and structure.

Risk Assessment is the entity's identification and analysis of relevant risks to achievement of its objectives, forming a basis for determining how the risks should be managed.

APPENDIX II (Continued)

Chapter 647 Awareness LetterFrom the State Auditor and the State Comptroller

Control Activities are the policies and procedures that help ensure that management directives are carried out.

Information and Communication are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.

Monitoring is a process that assesses the quality of internal control performance over time.

Chapter 647 requires that an official, equivalent in title or rank to an assistant or deputy to the department head shall be responsible for the evaluation of the effectiveness of the department's internal controls and establish and implement changes necessary to ensure the continued integrity of the system. This should be done annually or more often as conditions warrant. Department officials responsible for internal controls should evaluate whether their departments' Internal Control Plans include the above components.

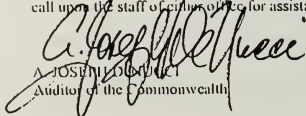
To assist Departments with this effort, we provide the following support activities:

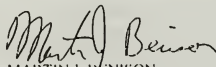
- The Office of the Comptroller offers departments both ongoing and special internal control training upon request.
- An Internal Control Guide (due to be updated in early Fiscal Year 2000) is available on the Office of the Comptroller's Web page: <http://www.osc.state.ma.us/>.
- Upon request, the Office of the Comptroller provides assistance to departments in the process of redefining or reviewing their Internal Control Plans.
- As part of the Statewide Single Audit, auditors will review and comment upon the Internal Control Plan of any department with audit coverage.
- Single Audit testing will include increased work: test the transaction compliance with the Internal Control Plan; go beyond the plans to assess and test the plans' implementation within departments.

Chapter 647 requires that all unaccounted for variances, losses, shortages or thefts of funds or property be immediately reported to the Office of the State Auditor (OSA). The OSA is required to determine the amount involved and the internal control weaknesses that contributed to or caused the condition, make recommendations for corrective action, and make referrals to appropriate law enforcement officials. In order to comply with this law instances must be reported on the Report on Unaccounted for Variances, Losses, Shortages, or Theft of Funds or Property and be submitted to the OSA. Reporting forms can be obtained by contacting the Auditor's office, Room 1819, McCormack State Office Building or Web Site: <http://www.magnet.state.ma.us/sao/>.

The Offices of the State Comptroller and the State Auditor are committed to the goal of improving the Internal Control structure of the Commonwealth, department by department.

Thank you for your cooperation and attention on this worthwhile task. Please do not hesitate to call upon the staff of either office for assistance.


A. JOSEPH DESTEFANO
Auditor of the Commonwealth


MARTIN J. BENISON
State Comptroller

